TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

HB 948 - SB 1281

March 16, 2021

SUMMARY OF ORIGINAL BILL: Extends, from 15 to 30 days, the period of time within which a party or any member of the Health Services and Development Agency (HSDA) may file a notice to request the agency review an action by the executive director.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (001919): Deletes all language after the enacting clause. Makes various changes to the certificate of need (CON) process for healthcare facilities and services.

Requires the HSDA to develop criteria and standards to guide the agency when issuing CONs that are evaluated and updated at least once every five years, developed by rule in accordance with the Uniform Administrative Procedures Act, and are based, in whole or in part, upon input the HSDA received during development of the criteria and standards from: the Division of TennCare, or its successor, the Department of Health (DOH), the Department of Mental Health and Substance Abuse Services (DMHSAS), the Department of Intellectual and Developmental Disabilities (DIDD), the Health and Welfare Committee of the Senate, and the Health Committee of the House of Representatives.

Requires HSDA to conduct studies related to healthcare including a needs assessment that must be updated at least annually. Exempts mental health hospitals from CON regulations. Prevents health care institutions from: (1) adding beds of a category of service that they were not already providing; (2) redistributing beds to other facilities; and (3) establishing new beds at new satellite facilities.

Allows any hospital licensed under Title 33 or 68 to operate a non-residential substitution-based opioid treatment center if the program is certified by the DMHSAS and the federal Department of Health and Human Services. Requires a county that, as of January 1, 2021, is designated as an economically distressed eligible county by the Department of Economic and Community Development, and has no actively licensed hospital located within the county is exempt from having to obtain a CON.

Requires a provider of positron emission tomography services or magnetic resonance imaging services be accredited by the Joint Commission or American College of Radiology within two years of the initiation of service. Exempts a home care organization that is limited to providing home health services to patients under the federal Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (42 U.S.C. § 7384, et seq.) from having to receive a CON.

Allows an initiation of magnetic resonance imaging services for patients 15 years or older or increasing the number of magnetic resonance imaging machines for patients 15 years or older, initiation of positron emission tomography, or an outpatient diagnostic center in a county with a population in excess of 175,000 to be established or operate without a CON.

Allows the Commissioners of DOH, DMHSAS, and DIDD to submit written reports or statements and send representatives to testify before the agency with respect to applications.

Increases existing fees and establishes new fees for healthcare providers and requires HSDA to annually collect the fees. Requires fees be paid to the Treasurer and deposited in the General Fund and credited to the HSDA's separate account.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue –
Net Impact – $1,249,300/FY21-22 and Subsequent Years/
Health Services Development Agency
$37,300/FY21-22 and Subsequent Years/
General Fund

Decrease State Revenue – $165,900/FY21-22 and Subsequent Years/
Department of Health

Increase State Expenditures –
$165,000/FY21-22 and Subsequent Years/General Fund
$321,600/FY21-22/Health Services Development Agency
$305,900/FY22-23 and Subsequent Years/
Health Services Development Agency

Other Fiscal Impact – The Department of Health will reallocate resources and reclassify positions as needed to meet the initial requirements of the proposed legislation. The additional funds required by the department in future years to accommodate the reallocation of resources and meet the requirements of the proposed legislation are unquantifiable at this time.

Pursuant to Tenn. Code Ann. § 68-11-1623(b), the Health Services Development Agency (HSDA) is required to be self-sufficient. As of June 30, 2020, the HSDA's reserve fund balance was $2,459,400. The HSDA may increase fees for other certificate of need applicants in the future, if necessary, to remain self-sufficient.

Assumptions for the bill as amended:

Department of Health

- The DOH collected $165,875 in fees for licenses from healthcare providers used for purposes of supporting the state health planning division in FY19-20.
- The proposed legislation increases the fee schedule and redirects the revenue from the licensing fees to the HSDA.
- As a result, the DOH will experience a decrease in state revenue estimated to be $165,875 in FY21-22 and subsequent years.
- The DOH will need additional resources to meet the requirements of the proposed legislation in an efficient and timely manner.
- In the short term, it is assumed the DOH will reallocate existing resources and reclassify positions as needed to meet the requirements of the bill.
- In out years, DOH will need additional funds and positions to accommodate for the reallocation of resources and continue to meet the requirements of the proposed legislation.
- An exact amount of resources and funds is unquantifiable due to a number of unknown factors as to how the proposed legislation will impact the state's health care facilities landscape and the timing of such impacts.

Health Services and Development Agency

- The recurring increase in state revenue to the HSDA due to increasing licensure fees for healthcare providers and transferring total fee proceeds to an HSDA account is estimated to be $1,756,252 in FY21-22 and subsequent years.
- The HSDA will reduce the current CON application fees from $5.75 per $1,000 of project costs with a minimum of $15,000 and a maximum of $95,000 to $2.25 per $1,000 of project costs with a minimum of $3,000 and a maximum of $45,000.
- Under the current fee structure, the average CON fee collections from FY16-17 through FY18-19 were $1,465,903.
- This amount represents a higher than typical average of collections; therefore, this analysis assumes this average is 30 percent higher than the projected amount to be collected.
- CON fee collections are estimated to be $1,127,618 ($1,465,903 / 1.3) in FY21-22 and subsequent years under current law.
- Using the reduced fee schedule that HSDA will adopt upon passage of this legislation, the average CON fee collections from FY16-17 through FY18-19 would have been $571,864.
- Adjusting for the higher than average collections during that time-frame, CON fee collections, after the planned reduction in fees, are estimated to be $439,895 ($571,864 / 1.3) in FY21-22 and subsequent years.
- The elimination of certain CON project types will result in fewer applications being filed with HSDA. It is estimated the HSDA will experience an annual loss of $180,810 in application fees based on the new fee schedule.
- The recurring decrease in state revenue associated with a reduction in CON fees is estimated to be $506,913 ($1,127,618 - $439,895 - $180,810).

- The total net increase in state revenue to the HSDA is estimated to be $1,249,339 ($1,756,252 - $506,913) in FY21-22 and subsequent years.
- The HSDA cannot accommodate the proposed legislation within existing resources and will need to reclassify three existing positions and hire three new positions to accommodate the added requirements of the proposed legislation.
- The one-time increase in state expenditures is estimated to be $15,292 for computer and work stations.
- The recurring increase in state expenditures is estimated to be $306,348 ($236,352 salaries + $59,496 benefits + $7,000 supplies + $3,500 membership fees) in FY21-22 and subsequent years.

Department of Mental Health and Substance Abuse Services

- The proposed legislation allows any hospital licensed under Title 33 or 68 to operate a non-residential substitution-based opioid treatment center if the program is certified by the DMHSAS and the federal Department of Health and Human Services (DHHS). The DMHSAS does not certify opioid treatment programs. They license the programs once they have received a CON from the HSDA and have been certified by the federal DHHS.
- The DMHSAS has been designated as the State Opioid Treatment Authority (SOTA) under federal law and is responsible for program oversight and clinical assistance of any such opioid treatment programs. The clinics are required to be surveyed at least twice a year to maintain licensure.
- The DMHSAS currently licenses 19 mental health hospitals and the DOH licenses 147.
- The DMHSAS currently licenses 14 non-residential office-based opiate treatment facilities. The licensure fee for these facilities is $810.
- This analysis assumes a total of 152 [(19 mental health hospitals - 14 non-residential office-based opiate treatment facilities) + 147 DOH hospitals] facilities would be eligible to apply for licensure in order to operate an opioid treatment program.
- Assuming 30 percent or 46 (152 x 30.0%) hospitals will apply for licensure with DMHSAS to establish an opioid treatment program, the recurring increase in state revenue to the General Fund is estimated to be $37,260 (46 hospitals x $810).
- The DMHSAS will require two additional clinical positions to maintain the current 20 facilities to one position.
- The recurring increase in state expenditures is estimated to be $165,045 {[($47,616 salary + $14,655 benefits) x 2 positions] + $40,503 travel, supplies, computer, etc.} in FY21-22 and subsequent years.

Division of TennCare

- The proposed legislation deletes Tenn. Code Ann. § 68-11-1621 which establishes criteria for issuance of CON for new nursing home beds regardless of site, including conversion of any beds to licensed nursing home beds.
- No CON requests have been denied under this section of code in several years; therefore, any fiscal impact is estimated to be not significant.

Total Fiscal Impact

- The recurring net increase in state revenue to the HSDA is estimated to be $1,249,339 in FY21-22 and subsequent years.
- The total recurring increase in state revenue to the General Fund is estimated to be $37,260 in FY21-22 and subsequent years.
- The total recurring decrease in state revenue to the DOH is estimated to be $165,875 in FY21-22 and subsequent years.
- The total increase in state expenditures to the HSDA is estimated to be $321,640 ($306,348 + $15,292) in FY21-22 and $306,348 in FY22-23 and subsequent years.
- The total recurring increase in state expenditures to the General Fund is estimated to be $165,045 in FY21-22 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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